

IN THE MATTER OF ARBITRATION BETWEEN

CITY OF BLUE EARTH
(Employer/City)

and

LAW ENFORCEMENT LABOR
SERVICES, INC., LOCAL NO. 250
(Union)

DECISION AND AWARD
(Interest)
BMS Case No. 06-PN-0526

ARBITRATOR: Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: June 14, 2007, at the Blue Earth City Hall,
Blue Earth MN.

RECEIPT OF POST-HEARING BRIEFS: Both Parties submitted timely briefs
which were received by July 5, 2007.

APPEARANCES

FOR THE EMPLOYER/CITY:
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THE EMPLOYER

The City of Blue Earth (Employer or City) is a community located in South-Southwest MN at the junction of Interstate Highway 90 and US Highway 169. The City serves as the county seat for Faribault County. According to the 2000 U.S. Census, the City had a population of approximately 3600 people. The City operates its own Police force consisting of about six (6) full-time employees.

THE UNION

In 1999, Law Enforcement Labor Services, Inc. and its Local Union No. 250 became the certified collective bargaining representative for a unit of Patrol Officers employed by the City's Police Department. The current bargaining unit consists of about five (5) full-time Patrol Officers.

COLLECTIVE BARGAINING HISTORY

Since its certification in 1999, the Union and the Employer have been parties to a series of labor contracts covering the unit employees. The most recent contract was effective January 1, 2005 and expired December 31, 2005. The Parties attempted to negotiate a successor contract, but those negotiations failed to resolve a number of issues.

THE CURRENT ISSUES

On February 15, 2006 the Minnesota Bureau of Mediation Services (BMS) certified the following issues for arbitration pursuant to Minn. Stat. §179A.16, subd. 2:

1. Duration – One or Two Year Contract (Article 33)
2. Wages 2006 – Level of Wages 2006 (Article 18, App. A)
3. Wages 2007 – Level of Wages 2007 (If Awarded) (Article 18, App. A)
4. Wages – Wage Schedule Structure (Article 18, App. A)
5. Cell Phone Pay – Level of Cell Phone Pay (Article 18.4)
6. Holidays – Designated Holidays (Article 24)
7. Compensatory Time – Level of Maximum Accumulation (Article 11.5)
8. Court Time – Level of Minimum Hours for Court Appearance (Article 12)
9. Call Back – Level of Minimum Hours for Call Back to Duty (Article 13)
10. Uniform Allowance – Level of Employee Paid Annual Uniform Allowance (Article 20)
11. Vacation – Level of Vacation for Employees Hired After 5/16/99 (Article 23)
12. Insurance 2006 – Level of Employee Contribution for 2006 (Article 25)
13. Insurance 2007 – Level of Employee Contribution for 2007 (Article 25)

This Arbitrator was subsequently selected by the Parties, pursuant to Minn. Stat. §179A. subd. 4., to hear and resolve these Issues.

Upon the opening of the hearing on June 14, 2007, the Parties informed the Arbitrator that they had informally resolved the following Issues, previously certified by BMS for arbitration:

1. Duration of Contract - (Article 33). Agreement that the new contract will be for two (2) years. Effective January 1, 2006 and scheduled to expire December 31, 2007.
5. Cell Phone Pay – (Article 18.4). Informal agreement reached.
6. Holidays – (Article 24). Withdrawn by Union.
8. Court Time – (Article 12). Withdrawn by Union.
9. Call Back – (Article 13). Withdrawn by Union.

With the Parties' resolution and disposition of those five (5) Issues, it leaves the following eight (8) Issues to be resolved by this Arbitrator:

1. Wages 2006 – Level of Wages for 2006 (Article 18, Appendix A)
2. Wages 2007 – Level of Wages for 2007 (Article 18, Appendix A)
3. Wages – Wage Schedule Structure (Article 18, Appendix A)
4. Compensatory Time – Level of Maximum Accumulation (Article 11.5)
5. Uniform Allowance – Level of Employee Paid Annual Uniform Allowance (Article 20)
6. Vacation – Level of Vacation for Employees Hired After 5/16/1999 (Article 23)
7. Insurance 2006 – Level of Employee Contribution for 2006 (Article 25)
8. Insurance 2007 – Level of Employee Contribution for 2007 (Article 25)

The challenge to an arbitrator, in an Interest case such as this, is to try to formulate a suitable resolution based on what the Parties, as reasonable persons, would have eventually agreed upon had their negotiations proceeded to a successful conclusion. To achieve that goal and objective, like my arbitrator colleagues, I subscribe to a commonly accepted set of standards of analysis to be applied to an issue. These are the same standards that the Parties themselves applied in the context of their contract negotiations.

- Ability to Pay – Can the Employer reasonably afford to pay the requested wage or benefit amount without causing serious harm to the continued financial viability of the organization?
- Statutory Considerations – Does the contemplated resolution violate or conflict with any applicable statutes, rules or regulations?
- Internal Comparisons – How does the contemplated resolution fit within or affect the existing organizational pay system and structure? Does it maintain a reasonable and equitable relationship with other positions within the organization?
- External Comparisons – How does the contemplated resolution, if adopted in this organization, compare with like or similar positions in other comparative organizations?
- Other Economic and Market Forces – Do these forces, e.g. supply and demand, cost of living, etc., have any notable effect - positive or negative - on the contemplated resolution?

I am also cognizant of the fact that while private sector Interest arbitration is bilateral – involving the employer and the employee – in the public sector, it is trilateral, with at least three distinct and different interests to be accommodated, the employees, the particular governmental unit as employer and the citizens represented by that governmental unit as voters, taxpayers and consumers of services. Also, to make the mix more interesting, those various parties, groups and constituencies each have their own distinct political and economic philosophies, perspectives and goals.

ISSUES NOS. 1 AND 2 – WAGES FOR 2006 AND 2007 (Article 18, App. A):

Because of their relatedness, I shall review and discuss Issues 1 and 2, Wages for 2006 and 2007, together.

Union Position – The Union proposes a 5% wage increase for 2006 and a 5% wage increase for 2007.

Employer Position – The Employer proposes to maintain wages at the rates set forth in the 2005 contract for both 2006 and 2007 – effectively freezing wages for the duration of this new contract.

Ability to Pay

Union Position: The Union points out that the City's Unreserved Fund balances have shown steady growth over the past several years for which audited financial statements are available. From December 31, 2003 to December 31, 2005 the General Fund Balance increased from \$610,717.00 to \$763,827.00. Additionally, the Union notes that for fiscal years ending December 31, 2003 through December 31, 2005, the City's revenues exceeded expenditures by \$147,712.00. It also speculated and the City did not dispute that in fiscal years 2006 and 2007 the City has had balanced budgets and could likely see revenues again exceed expenditures.

The Union also points out that in 2004 the City's Unreserved Fund Balance as a ratio of expenditures was 58.7%. At the end of the 2005 fiscal year that ratio had increased to 73.2%. The Minnesota State Auditor's office guidelines for such ratios indicate that communities with ratios of 35-50% are to be considered financially healthy. According to the Auditor, ratios falling outside of those guidelines are indicative of possible problems.

The Union presented copies of the City's own financial documents which showed that, in 2005, the City's General Fund had a balance of \$763,827.00, with excess revenues of \$75,514.00 over expenditures and an investment portfolio valued in excess of \$6.8 million dollars. Because of the City's obvious and admitted financial health, the City can afford to pay the Union's proposed wage and benefit requests.

Finally, the Union estimates that if its proposed 5% wage increase for 2006 is adopted, it will cost the City only \$5,488.70. If its proposed 5% wage increase for 2007 is also adopted, it will cost the City only \$9,401.60. With 5% wage increases adopted for both 2006 and 2007, the total cost to the City for those two years will be \$14,890.30. These amounts are well within the City's ability to pay.

Employer's Position - The City does not contend that it is unable to pay the Union's proposed wage and benefit increases. However, it points out that its financial situation is not quite as positive as Union portrays it. While acknowledging that the Unreserved Fund ratios for 2004 and 2005 are correct, the City contends that a more correct measure is the ratio of Reserved Funds to current Expenditures. Applying that standard to the City's financial situation as of December 31, 2005 provides a ratio of 16%, rather than the 73% ratio for the Unreserved Funds.

The City further argues that it has not been able to deposit any additional monies in the Reserve Fund in 2006 or thus far in 2007. Finally, the City notes that in October, 2006, Moody's Investor Service gave the City's \$2,000,000.00 General Obligation Swimming Pool Bond Issue a rating of "Baa2". The Moody's rating report states that the city's overall debt burden is high at 9.4%, with direct debt at 8.9%. The City notes that in addition to the Swimming Pool capital expenditures, it has also constructed a new Public Safety Center; which is the base of operations for the Police Department. That capital project has significantly enhanced the comfort and work environment for the members of the Police Department, including the Patrol Officers. With the new Swimming Pool and the Public Safety Building, the City simply does not have the ability to pay wages as requested by the Union, at this time, due to its other outstanding financial obligations.

Analysis, Discussion and Conclusions – Based on the record evidence and data and the positions as articulated by the Parties, I see no definitive evidence to indicate that the City is unable to pay the economic amounts that are being proposed by the Union. It is obvious from the State Auditor's reports from 2004 and 2005 that the City had excessive ratios (by the Auditor's guidelines) of unreserved funds to expenditures in each of those years. Also, based on the budget and financials for 2006 and 2007 there is no evidence to indicate that the City is in anything close to a financial crisis.

The Union estimates regarding the actual costs of its 5% wage increase proposals for 2006 and 2007 were \$5,488.70 for 2006 and \$9,401.60 for 2007 or a total of \$14,890.30. According to the City's budget figures for 2006, the Police Department budget amount was \$479,294.00, an increase of \$73,273.00 or 18+% over the department's budget amount for 2005. The Union's proposed wage increase for 2006, amounting to \$5,489.00, would constitute an increase of about 1.1% in that department budget.

The City's 2007 budget amount for the Police Department is indicated to be \$517,211.00 or a 20.4% increase over the 2006 budget. Based on those figures, the Union's proposed 5% wage increase for 2006 and another 5% increase for 2007, with a combined cost of \$14,890.00, would constitute an increase in that budget of about 3.47%.

In view of the foregoing and the record evidence and data submitted, I find that the City is financially viable and able to pay the Union's proposed wage increases, without otherwise jeopardizing its overall financial position.

Statutory Considerations

Union Position – The Union points out that the City is currently not in compliance with the Minnesota Local Government Pay Equity Act (MLGPEA) due to reporting errors. The City's lack of compliance with the statute has nothing to do with the Union's current proposals. While the City speculates that awarding the Union's wage increase proposals might present additional compliance problems, it offers no specific evidence or documentation to support that speculation. In this situation, Pay Equity is not at issue and the Arbitrator need not consider Pay Equity in his award.

Employer Position – The City acknowledges that it is currently not in compliance with MLGPEA, but disagrees with the Union's position that because of the non-compliance situation the Pay Equity Act is not applicable herein. The City points out that pay equity will become more of a problem for the City if a pay increase is instituted for the Patrol Officers. It notes that because the Police Department is a traditionally a male-dominated group within the City, a comparison with departments that are traditionally female-dominated, such as Library staff, will show that they are paid at a market rate that is lower than that of the Police Department. Thus a wage increase for the Patrol Officers will make the situation worse and, therefore, pay equity must be considered as a factor in this case.

Analysis, Discussion and Conclusions - The City is currently not in compliance with the reporting provisions of MLGPEA and apparently has not been in compliance since about 2003. As result, the City is unable to cite any specific data or evidence to support its contention that, if the Union's wage increase proposals were granted, such increases may or could cause equity problems within the existing wage structure and system. Apparently the City has until 2009 to rectify its current MLGPEA reporting problems.

I note that the current Patrol Officer bargaining unit consists of five (5) individuals – four males and one female. This would constitute a "Balanced Class" per MLGPEA.

Accordingly, the City's contention is mere speculation at this point and does not rise to the level of a valid objection or challenge to the Union's proposed wage increases, per the provisions of MLGPEA. Therefore, I find that there is no credible evidence to indicate that awarding the Union's proposed wage increases would currently violate or conflict with the letter or spirit of MLGPEA.

Internal Comparisons

Union Position - In the hearing the City claimed that they have established a wage pattern by paying all their employees at rates below their market value. The City really doesn't have a history of internal patterns of wage increases. Contrary to the City's asserted pattern of increases, the current round of contract negotiations with the Union shows that the City violated that alleged practice. The City's proposed two-year wage freeze for the Patrol Officers is in stark contrast to the wage increases provided to other City employees in 2006 and 2007:

| <u>Employee Group/Unit</u> | <u>Wage Increase for 2006</u> | <u>Wage Increase for 2007</u> |
|--------------------------------------|-------------------------------|-------------------------------|
| Non-union employees | 3.0% | 2.4% |
| Employees covered by AFSCME contract | 3.0% | 2.4% |

More illuminating is the City's wage increase history since 2001:

| <u>Employee Group/Unit</u> | <u>2001</u> | <u>2002</u> | <u>2003</u> | <u>2004</u> | <u>2005</u> |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|
| Non-union employees | Varied | 4.0% | 3.0% | 0.0% | 3.0% |
| Employees covered by AFSCME contract | Varied | 4.0% | 3.0% | 0.0% | 3.0% |
| Patrol Officers | Varied | 4.25% | 3.0%* | 3.0%* | 3.0% |

*Wage increase awarded through arbitration.

The lack of an internal pattern puts even more weight on the most accepted method of setting wages – the Marketplace.

The Union has met its burden in proving internal equity is not compromised by with its wage increase proposals. The critical component of internal equity is compliance with MLGPEA. The City is currently out of compliance with MLGPEA, regardless of whether the Union's wage proposals are awarded. Furthermore, the City offered no proof or evidence that the Union's proposals will impact compliance and the City has until 2009 to bring itself into compliance.

The City has no clear history of internal settlements and it proposes a wage freeze for the Patrol Officers for both 2006 and 2007, in spite of wage increases to its other employees.

Employer Position - The City does not challenge or contest the historical internal wage increase figures entered into evidence by the Union. The City believes that in evaluating the respective wage proposals, the most consideration should be given to the standards of Ability to Pay and Internal Equity. When the evidence concerning these two factors are analyzed, it should be clear that the City's proposal of 0% wage increases for 2006 and 2007 for the Patrol Officers is more reasonable than the Union's proposal of a 5% increase for each of those years.

With reference to Ability to Pay, the City points out that in the hearing the Union placed a great deal of emphasis on the figures from the State Auditor's Office showing that the City's ratios of unreserved funds to expenditures for 2004 and 2005 were 58.7% and 73.2%, respectively. While those figures are accurate, they are not a true and accurate measure of the City's ability to pay. The State Auditor has set a standard of between 35% and 50% Reserve Fund balance when compared to Expenditures to determine the financial health of the City. The City agrees that this is the appropriate standard to determine the City's ability to pay. It is the City's position that its reserve fund ratio is 16% as of December 31, 2005 (Reserve Fund - \$593,602.00 and Operating Expenses of \$3,368,840.00).

The evidence presented in the hearing indicated that the City had a reserve fund balance of \$593,602.00 on December 31, 2005. The Union then attempted to mislead the Arbitrator by indicating to the Arbitrator what the unreserved fund balances were on December 31, 2004 and December 31, 2005, according to the reports issued by the State Auditor's Office, to show that the City has a large unreserved balance. This is an incorrect standard. The correct standard of measure is the percent the of reserve fund to current expenditures, not the unreserved fund. That number calculates out to 16.8%, based upon the Auditor's chart provided by the Union as of December 31, 2005. This matches the evidence presented by the City. Additionally, when one looks at the Auditor's chart for 2004, as presented by the Union, one sees that in fact, the ratio of reserves to expenditures for the City reduced by 14.5% between 2004 and 2005. This trend has continued as the City has not been able to place any further funds in reserve in 2006 or 2007. Therefore, when one uses the standard suggested by the Union and set by the State Auditor's Office, it is clear that the City's ability to pay is quite low with no prospect of increasing in the near future. Thus the City does not have the ability to pay as believed by the Union and the 0% wage increase is not unreasonable, given that there is no increase in reserve funds budgeted for either 2006 or 2007, the years currently in dispute.

Additionally, when one takes a good look at the evidence presented concerning internal comparisons, one can see that the City currently has a situation where almost all City departments are underpaid, when compared with external comparison groups, regardless of what the group is. The results of the Hay Point Factor System study clearly shows that the City has a pay structure which pays its employees at a level substantially lower than other cities of similar size in all departments, not just the Police Department. In fact, the study indicates that the Police Department is one of the healthier departments in the City with respect to the market level of wages. Thus, internally, a pay increase of 0% to the higher paid department is consistent and appropriate.

Analysis, Discussion and Conclusions – The Union contends that the City doesn't have a history or pattern of wage increases for its employees. The historical

wage increase data for the City, as submitted by the Union, would appear to dispute that contention. The data, covering the years 2001 through 2007, indicates that wage increase rates granted to the City's non-union employees have been identical to the wage increase rates negotiated for the City employees represented by AFSCME for each year. The "exceptions" to those annual wage increase patterns have been the LELS Patrol Officer bargaining unit. Specifically, in 2002, the non-union group and the AFSCME group received or settled for a wage increase of 4%. The LELS group negotiated a 4.25% increase in that same year. In 2003, the non-union and the AFSCME groups received or settled for a 3.0% wage increase. The LELS group went to arbitration and also obtained a 3.0% increase. 2004 is particularly interesting, in that the non-union and AFSCME groups received or settled for a 0% increase, but the LELS group achieved a 3% increase for that year, again via arbitration. In 2005, all three groups, non-union, AFSCME and LELS received or settled for a 3% increase, with no arbitration. In 2006, the non-union and AFSCME groups received or settled for a 3% increase and LELS chose to submit the wage issue to arbitration. For 2007, the non-union and the AFSCME groups received or settled for a 2.4% increase and LELS is again in arbitration on the wage issue.

In reviewing the City's position and arguments, the first thing that comes to the fore is the fact that on the one hand, the City proposes 0.0% wage increases for both 2006 and 2007 for the Patrol Officers, but on the other hand, has authorized or negotiated notable wage increases for all other City employees for those same two years.

In support of its wage freeze proposal, the City admits that its 2006 Hay Point Factor System study indicates that virtually all City employees are currently being paid under market value. However, the City argues that the study shows that of all the City departments, the Police Department is one of the "healthier" departments with respect to market level wages. Therefore, the City argues that because the Patrol Officers in the Police Department are not as underpaid, with respect to market-level wages, as most other City employees, they deserve to have their wages frozen for 2006 and 2007. Apparently by that rationale, the two-year wage freeze will help bring the Patrol Officers back down to the same "unhealthy" compensation state as all the other City employees, as indicated by the results of the Hay study.

The City argues that its position is justified by the fact that the Officers are already highly paid, relative to other city employees and points to its recent Hay Point factor System study which shows that the Patrol Officer's Market Variance was only -10.4%. That figure indicates that the City's Patrol Officer wages were 10.4% below the market level wage. To determine the market level wage, the study surveyed a group of 14 other communities and also utilized data from the Minnesota Department of Economic Development. Nine of the communities in the study survey are also included in the 17 city comparison group.

I note that of the 27 City jobs reviewed in that study, only three had positive Market Variance percentages (paid higher than comparison market). Of the remaining 23 jobs that had negative Market Variance percentages (paid lower than comparison market), the negative Variances ranged from a high of -51.8% (Fitness Center Dir./Pool Mgr. and Senior Center Dir.) down to -5.8% (Library Clerk). In the absence of any record evidence or data to the contrary, I must presume that all these other employees, regardless of whether their jobs were rated positive or negative with respect to market level wage rates, received a 3% wage increase in 2006 and are receiving a 2.4% increase in 2007. Apparently the Patrol Officer group was the only group to which the City offered a wage freeze, rather than an increase. I also note that the City's Hay Point Factor System study apparently wasn't completed until late 2006 or early 2007. What was the City's original rationale supporting a proposed wage freeze during the contract negotiations that took place back in late 2005 and early 2006?

Having previously found the City's argument as to inability to pay to be without merit and based upon the foregoing and the other record data and evidence, I conclude that the City has not made a clear and convincing case to justify its proposed wage freeze for both 2006 and 2007 for the Patrol Officer group.

Turning to the Union's proposed wage increases of 5% in 2006 and 5% in 2007, I conclude that its arguments and the internal comparison data fail to support those increases. Given that both of the other City employee groups have received or settled for wage increases of 3% in 2006 and 2.4% in 2007; the Union fails to offer any clear and convincing rationale to justify 5% increases, on the basis of internal comparisons.

In reaching that conclusion, I also compared the wage increases negotiated by AFSCME for the years 2001 through 2005 with the increases negotiated or achieved through arbitration by LELS for those same years; AFSCME negotiated a total of 10% in wage increases during that period, while LELS achieved a total of 13.25% in increases for that same period. If the LELS group receives 5% wage increase for both 2006 and 2007, their wage increases since 2001 would total 23.25% or a difference of +7.85% in wage increases for the LELS unit, over both the AFSCME and non-union groups. I further note that this internal wage disparity is not explained by concurrent changes in the job itself. I don't consider that wage disparity to currently be a problem, in view of the other apparent problems indicated by the City's Hay study. However, a significant increase in that disparity in the future could cause some problems.

Based on the internal comparison data, I further conclude that the Patrol Officers would be entitled to the same 3% wage increase for 2006 and the 2.4% increase for 2007, as received by the other groups of City employees.

External Comparisons

Union Position – The Union believes that recognition of the external marketplace is of paramount importance in evaluating the Union's wage increase proposals, particularly where there is considerable disparity between the City and the external market.

The Union believes that the 17 cities south of Highway 212, whose populations are plus or minus 1000 of the City of Blue Earth (pop. 3600), are the relevant comparison group in this matter. This group was previously agreed upon by both the City and the Union and was used in the 1999 and 2001 contract negotiations. This group was again confirmed by Arbitrator Paull, in 2003, as the relevant comparison Group. The City now offers a new comparison group proposed by their hired consultant as part of a compensation study (Hay Point Factor System study) that is in progress. The Union believes that adoption of this new comparison group is premature. The MLGPEA addresses this issue. "*The arbitrator shall consider both the results of a job evaluation study and any objections to the study.*" Minn. Stat. §471.992 Sub. 2 (2005). Since the study is not yet complete, there has been no opportunity for the Union to review or object to the results. Although the City's proposed group does include at least nine (9) of the 17 cities in the currently recognized comparison group, its validity is questionable since it includes some cities that do not have police departments. Accordingly, the City's proposed external comparison group should be rejected.

Turning to the 17 city market comparison group, Blue Earth ranks 5th in population within that group. A comparison of Police Officer wage rates among those 17 cities for 2005 finds the rates for the City of Blue Earth to be 15th out of 17 – almost at the bottom of the group.

In 2006 the data show that the average wage settlement within the comparison group was 3.48%, with only City of Blue Earth rates not settled. For 2007, the average wage increase rate within the 17 city group is currently 3.71%, with only Blue Earth and Jackson not settled.

If the City's proposed wage freeze is adopted for 2006, the pay rates for the Blue Earth Patrol Officers will drop them from 15th to 16th place among the 17 city group for that year. If the proposed freeze is also adopted for 2007, the Blue Earth Officers will fall into 17th or last place, in terms of wages, among the 17 city group.

If the Union's proposed wage increase of 5% is adopted for 2006, the City's pay rate rank for Officers would move from 15th to 13th among the 17 city group.

This is a case where external comparisons are extremely important due to the growing disparity between top pay for Police officers in Blue Earth and the other officers in smaller communities in southern Minnesota. A significant external disparity in pay has been recognized as a compelling reason to look beyond internal settlements.

During the hearing, the City's only argument against the Union's proposals with respect to external comparisons was that the City routinely pays less than comparison communities for all job classifications. The City ignores the difference between essential law enforcement officers and other non-essential employees.

The Union believes that its proposed wage increases of 5% in 2006 and 5% in 2007 are more than justified by the evidence and data. As noted the City of Blue Earth is ranked 5th among the 17 comparison cities in population, yet its Police Officers are among the lowest paid in that group. If the City's proposed wage freeze for 2006 and 2007 is adopted, the Patrol Officers wage rates would be at the bottom of the list.

Employer Position – The City currently has a situation where almost all City departments are underpaid, when compared with other external comparison groups, regardless of what the group is. The data from the recent Hay Point Factor System study clearly shows that the City has a pay structure which pays its employees at a level substantially lower than cities of similar size in all departments, not just the Police Department. In fact, the data indicates that the Police Department is one of the healthier departments within the City as to market rate disparities. Thus, internally, a pay increase of 0% to the higher paid department is consistent and appropriate. The City also points out that its relatively low comparison wage position for Patrol Officers has had no negative effect on recent recruitment efforts to fill vacancies within the Police Department. Two new Patrol Officers have been hired within the past year and one-half and there were more than enough well-qualified applicants and candidates from which to choose. It also points out that such vacancies are typically filled by newly licensed Peace Officer applicants who are seeking initial training and experience in a law enforcement environment.

The City does not believe that the 17 city comparison group, cited by the Union, is appropriate. The Union's group relies upon simple wage information from a group of similar sized cities located in Southern Minnesota. The alternative comparable list of nine (9) cities provided by the City takes into consideration additional factors dealing with the financial health of the City – not just population and geographical location. The City's comparison group, as utilized in the Hay Point Factor System study analysis, shows that the Blue Earth Police Department is almost within the + 10% or -10% normally expected variance for market wages within that group. Specifically, the study shows that the actual 2006 wage rate for a City Patrol Officer was \$16.78/hr. and the Market Rate (using the 9 city group) in 2006 for that position was \$18.53/hr. or a -10.4% Market Variance. The Market Variance for the Police Chief was -12.6%.

The Union also argues that recent arbitrator holdings show that when the external market data justifies a pay increase, one should be given. However, a

detailed reading of those decisions shows that those arbitrators relied upon a statistical average in arriving at their position, known as the Stanton V average. No average is provided by the Union which considers market forces. The only information provided is a straight comparison to the 17 cities in its comparison group. On the other hand, the City's data shows that, statistically speaking, the current Police Department pay rates are not that far off when market forces are considered.

The Hay Point System study data and the ability to pay situation fully support the City's position that a 0% wage increase for the Patrol Officers for 2006 and 2007 is justified and appropriate.

Analysis, Discussion and Conclusions - As indicated above, the Parties are in dispute as to whether the external comparison group should be the 17 city or the 9 city group. I note that the Parties agreed upon and routinely used the 17 city group as the relevant comparison in their 1999 and 2001 contract negotiations and the use of that group was affirmed by Arbitrator Paull in 2003. As pointed out by the Union, and undisputed by the City, the 9 city comparison group is a product of the City's current Hay Point Factor System study. It says that study is still underway and has not been presented to the Union for review and comment. Therefore, the Union is not yet prepared to attest to whether that proposed new comparison group is more relevant or valid than the current 17 city comparison group. I find merit in the Union's position and conclude that the 17 city group is the relevant external comparison in this matter.

The City does not dispute that on the basis of external comparisons the Patrol Officers are currently underpaid and below market. Like the 17 city data, the City's own Hay Factor Point System study for 2006 readily confirms that fact. However, the City offers no specific solution to that disparity and at least overtly indicates that it is not worried about its low pay status.

The Union points out that according to the 17 city comparison data, in 2005 the City's top pay rate for Patrol Officers ranked it 15th out of 17. However, on the basis of beginning wage rates in 2005 the City was 14th out of 17. Even with adoption of its proposed 5% wage increase for 2006, the City would fall to 16th out of 17 relative to top rates, but on the basis of beginning rates would rise to 12th place. With the adoption of its proposed 5% wage increase for 2007, the City's position would rise to 13th out of 17 for top rates, and 12th or 13th for beginning rates – depending upon where the City of Jackson settles for 2007.

According to the 17 city comparison data, the average wage increase for the top rate for Patrol Officers was 3.48% in 2006 (with Blue earth unresolved) In 2006 the settled wage increases ranged from a high of 9.07% to a low of 1.47%. The 9.07% figure appears to be something of an aberration, as the next highest increase rate in 2006 was 4.90%. Removing the 9.07% figure, as an aberration,

the average calculation results in an average wage increase of 3.1% for the group, based on range of 1.47% to 4.90%.

The 17 city comparison data indicates an average 3.71% wage increase for Patrol Officers in 2007 (with blue Earth and Jackson unresolved). The rates for the 15 cities settled range from a high of 13.14% to a low of 0.0%. The 13.14% appears to be something of an aberration in that the next highest rate is 4.67%. Removing the 13.14% figure from the average calculation results in an average increase of 3.04%, based on a range of 0.0% to 4.67%.

Based upon the foregoing and the record data and evidence, I conclude that the external comparisons support the Union's position that a wage increase for the Patrol Officers is appropriate for both 2006 and 2007. I further conclude that the data indicates that a wage increase of at least 3% for each of those years would enable the City's Officers to maintain a least some sort of parity within the comparison group. A 5% wage increase, as proposed by the Union, in each of those years, would result in at least a modest rise in the City's wage ranking relative to the other cities in the comparison group.

Other Economic and Market Forces

Union Position – The Union notes that other Economic and Market Forces are also considered by arbitrators in Interest cases. The most frequently used such factor, both in negotiations and in Interest cases is the “cost-of-living”. Interest awards have granted wage increases to employees based, at least in part, on an arbitrator's consideration and application of the cost-of-living standard. In applying the cost-of-living standard arbitrators rely heavily upon the Consumer Price Index (CPI) data compiled and issued by the Bureau of Labor Statistics, U.S. Department of Labor (BLS).

According to BLS, the CPI for Midwest Non-Urban Consumers increased by 4.1% in 2005. The economic future is very uncertain, particularly because of rising fuel costs, which are clearly evident at any local gas station. Therefore, the CPI should be considered in establishing an appropriate increase for the City's Patrol Officers. The Officers are currently more than 6% below their marketplace average, therefore, the Union's wage proposals should be awarded to insure that the Officers' wages keep pace with inflation and move them toward a more appropriate wage level.

Employer Position – The City presented no specific evidence or arguments with respect to the Other Economic or Market Forces standard.

Analysis, Discussion and Conclusions – I accessed the BLS website to see if there was some updated CPI data available for 2006 and 2007. I did find the following:

For the Midwest, non-metropolitan urban wage earners and clerical workers, all items, non-seasonally adjusted.

2006: 2005 index =180.5, 2006 index =186.0. Formula: $186.0 - 180.5 = 5.5$ divided by 180.5 = .0304709 x 100 = +3.04%.

2007: 2006 index =186.0, 1st Half 2007 index = 189.175. Formula: $189.175 - 186.0 = 3.175$ divided by 186.0 = .0170698 x 100 = +1.71%.

According to this CPI data, the cost-of-living for non-metro urban wage earners and clerical workers residing in the Midwest has increased by about 4.75% from January, 2006 to June, 2007.

The CPI data does show a modest increase over the past 18 months in what is popularly referred to as the “cost-of-living” in the non-metro urban areas of the Midwest. However, I conclude that the figures fail to significantly support or justify the Union’s proposed 5% wage increases for both 2006 and 2007.

Award – Wages 2006 and 2007

According to my findings and conclusions, as above, with respect to the standards:

- There is no issue with respect to the City’s ability to pay the Union’s proposed wage increases for 2006 and 2007.
- There is no evidence to indicate that adoption of the proposed wage increases would violate or conflict with any statutes, rules or regulations.
- Internal equity comparisons do not justify or support the Union’s proposed 5% wage increases in both 2006 and 2007, but do justify wage increases in the percentages given to all other City employees for 2006 and 2007.
- External comparisons also fail to justify or support the Union’s proposed 5% wage increases for both 2006 and 2007. However, those comparisons do support wages increases for those years in amounts sufficient to enable the City’s Patrol Officers to maintain existing relative parity with similar employees in the 16 comparative communities.
- Consideration of other Economic or Market Forces, e.g. CPI data, does not significantly reinforce the Union’s wage increase proposals.

The City readily acknowledges that its employees are generally underpaid when compared with its peer communities. The City’s recent Hay Point Factor System study definitely confirms that fact. In this instance, the Union wishes to have the wages of its Patrol Officer bargaining unit increase to what it considers to be a higher or more respectable ranking for its members within the 17 city comparison group. The fact is that while the City’s Patrol Officers may be underpaid by external or market comparison, so are most of the other City employees and for many of them the wage disparity is greater than that for the Patrol Officers. The decision as to the City’s overall employee compensation market ranking rests with the City’s voters and elected officials, not with this arbitrator. That decision is ultimately based on political and fiscal philosophy considerations. However, I

can try to maintain some semblance of relative objective equity, on the basis of internal and external comparisons, within that system for everyone involved or affected.

Accordingly, the wage provisions of the two-year labor contract between the City and LELS for 2006-2007 shall include a wage increase of 3% for 2006 and a wage increase of 2.4% for 2007.

ISSUE NO. 3 – WAGE SCHEDULE STRUCTURE (Article 18, App. A):

Union Position – The Union proposes a change to the existing structure of the contractual wage schedule, Article 18, Appendix A. This proposed change to be effective July 1, 2007. Specifically, the Union would delete the existing “Start Step”. The existing “After 1 year” step would become the new “Start Step”. Each of the subsequent Steps in the existing schedule would become the previous Step, e.g. current Step 6 would become Step 5, etc. A new “After 6 years” Step would be added to the schedule and that new Step would be 5% higher than the new Step 5.

This proposed change to the existing wage schedule, if implemented on July 1, 2007, would only cost the City \$4784.00. The City does have the ability to pay for this change.

Adopting the change in the wage structure, coupled with the Union’s proposed wage increases of 5% in 2006 and 5% in 2007, will raise the City’s Patrol Officers’ compensation to a ranking of 7th among the 17 city comparison group. This higher ranking is reasonable in view of the City’s 5th rank in population among that comparison group.

The Union’s proposal also addresses a glaring internal equity problem. The Union introduced at the hearing a City advertisement for a vacancy in the position of Public Works Maintenance employee. The ad indicated that the potential wage range for the position was \$16.62 to \$17.67/hr. The Maintenance worker starting wage of \$16.62/hr. is \$.62/hr. more than the starting wage rate for a Patrol Officer, if the Union’s wage increase proposals for 2006 and 2007 are adopted. When confronted with the advertisement, the City said that the wage figure in the ad was a “typo”, but offered no documentation to corroborate that assertion.

The City’s action potentially creates pay equity issues by placing more value on a maintenance worker while ignoring the educational and state licensing requirements that must be met and maintained by the Patrol Officers. The Union’s proposal for a change in the existing Wage Schedule structure, coupled with its wage increase proposals will insure that the starting wage for a Patrol Officer is more than that of a maintenance employee.

The Union's wage schedule structure proposal corrects the current external and internal inequities, is affordable, reasonable and should be awarded by the arbitrator.

Employer Position – The City rejects the Union's proposed change in the existing Wage Schedule structure for essentially the same reasons that it rejects the Union's proposed 5% wage increases for 2006 and 2007. The Union's proposal is, in essence, asking for another wage increase for the Patrol Officers in addition to its proposed 5% wage increase for 2007. Therefore, the Union's proposal for a change in the existing wage Schedule should be rejected by the arbitrator.

Analysis, Discussion and Conclusions – First, contrary to the Union, I credit the City's explanation that the wage figures were "typos" in the ad for a Public Works Maintenance employee. I base that conclusion on;

- The fact that the City historically doesn't pay employees more than it has to.
- The Public Works Maintenance employee classification is covered by the current AFSCME labor agreement. According to that contract, the starting wage rate for a Maintenance employee is \$12.82/hr. and \$13.43/hr. for the Maintenance Lead classification. The wage figures quoted in the advertisement are the top wage rates for those two job classifications, nominally achieved after six (6) years of employment.
- At this point in time, the Union's argument regarding the advertisement is speculation, as there is no evidence that the City has, in fact, paid a newly-hired Public Works Maintenance employee at the top wage rate per the AFSCME contract.

I agree with the City's contention that the Union's proposed change in the existing Wage Schedule structure is really an additional wage increase for 2007. For essentially the same reasons and conclusions cited for my decision relative to the Union's proposed wage increases for 2006 and 2007, I conclude that this proposal must be rejected.

Award – Wage Schedule Structure

The City's position on this Issue is awarded and the Union's proposed change is denied.

ISSUE NO. 4 – COMPENSATORY TIME – LEVEL OF MAXIMUM ACCUMMULATION (Article 11.5)

Union Position – The Union proposes that the current accumulation cap for Compensatory Time hours be increased from 80 to 100 hours.

Increasing the accrual cap will not create a scheduling problem for the City, since it retains the right to approve or deny specific employee leave requests.

However, increasing the cap will provide the Officers with the opportunity to accrue additional leave time needed to attend family and community events. Many of those events typically occur in the evenings and/or weekends – times when the Officers are regularly scheduled to work.

The Union and City agree that Officers selecting compensatory time save the City money, as opposed to selecting cash payment for overtime hours worked. The Union also showed that two of the current Officers are approaching the existing 80 hour cap.

The Union's proposal provides savings to the City, provides employees with more leave hours available to spend with family and friends, is reasonable and should be awarded.

Employer Position – The City believes that the current cap of 80 hours on accumulated compensatory time is sufficient. The Union claims that there is a need for additional compensatory time, that the proposal is reasonable and will save the City money. However, the current data show that there is no shortage of compensatory time hours available to the Officers for their personal use. Four of the five Officers in the unit have positive balances over 20 hours in their accounts. This is notable since two of those Officers have been with the Department for six months or less.

Additionally, the existing 80 hour cap appears to be the standard for the police departments in the Union's 17 city comparison group. Five of the nine cities in the group who reported compensatory time systems use 80 hours as their cap and only one of the other four cities had a cap higher than 80 hours. Accordingly, the Union's proposal is unreasonable and should be denied.

Analysis, Discussion and Conclusions – This Issue brings to the fore the arbitral Interest principle and standard that says that a party proposing a change in existing language shall bear the burden of proof in demonstrating that there is a definite problem with the existing language and that its proposed change will effectively and efficiently resolve the problem, e.g. the proposal is necessary and reasonable. This appears to bear some relationship to the adage, "If it ain't broke, don't fix it!"

In this instance, I conclude that the Union has failed to meet its burden of proof to demonstrate that there is a problem with the existing 80 hour accumulation cap for Compensatory Time. Both the individual employee data and the accumulation policies in the comparison cities effectively argue against this proposal.

AWARD – Compensatory Time – Maximum Accumulation Level (Article 11.5)

The City's position is awarded and the Union's proposed change is denied.

ISSUE NO. 5 – UNIFORM ALLOWANCE – LEVEL OF EMPLOYEE PAID ANNUAL UNIFORM ALLOWANCE (Article 20)

Union Position – The Union proposes that the Annual Uniform Allowance for the Officers be increased from the current \$625 to \$700. The \$625 figure was negotiated by the Parties in 2005.

The Union believes that this increase in the Allowance is necessary to insure that the Officers are able to properly maintain the uniform, as required by the Employer. The Union presented evidence showing uniform item cost increases for 2006 ranged from 3-5%, with some vendors increasing prices by as much as 10%. Prices in 2007 may increase by even higher percentages.

An examination of the data for the 17 city comparison group shows that the allowance for the City's Officers is \$14.44 below the group average for 2007. Of the 17 city group, six of the cities have no uniform allowance, but furnish officers with all uniform items. Of the remaining nine cities for which allowances are paid and data is available, five of them had uniform allowances in excess of \$625/year.

The Union has shown the need for the proposed increase based on the economic impact of rising prices for uniform items and the disparity within the comparison group since the last increase in the City's allowance in 2005. Therefore, the Union's proposed increase is reasonable and should be awarded.

Employer Position – The City rejects the Union's proposed increase in the Uniform Allowance. The fact is that the Patrol Officers do not use their current allowance of \$625 on a yearly basis. Any unused balance in an Officer's individual Uniform Allowance account carries over year-to-year. As of the record evidence shows, the three Patrol Officers, who have been with the City for more than one year, had balances in their Allowance accounts of \$592.59 (Bullerman), \$369.07 (Fletcher) and \$625.00 (Purvis), as of 3/31/07.

Finally, an examination of the data from the 17 city comparison group indicates that the current allowance level of \$625/year is not a low comparison. Thus there is no need for an increase in this Allowance.

Analysis, Discussion and Conclusions – Like the situation with respect to Issue No. 4, the Union again bears the burden of proof with respect to its proposed increase in the Uniform Allowance. The Union points to reports within the

uniform supply business of specific price increases in 2006 and perspective increases again in 2007. However, the Union fails to show evidence to indicate that these purported industry price increases are adversely affecting the Officers' ability to purchase and maintain their personal uniform inventory using their current allowance. Additionally, the Union points out that the City's current allowance is \$14.44 below the 2007 average for the applicable cities in its comparison group. My question to that is, if the alleged disparity is \$14.44/year, why is the Union requesting an increase of \$75/year, even though the City's Officers have significant balances in their current Allowance accounts?

Accordingly, I conclude that the Union has failed to provide sufficient and substantial evidence in support of its proposed Allowance increase.

Award – Uniform Allowance – Level of Annual Employee Paid Uniform Allowance (Article 20)

The City's position is awarded and the Union's proposed increase in the Uniform Allowance is denied.

ISSUE NO. 6 – VACATION – LEVEL OF VACATION FOR EMPLOYEES HIRED AFTER 5/16/1999 (Article 23)

Union Position – The Union proposes to delete the existing contract Vacation language and schedule in Article 23.1 that applies to employees who were hired after 5/16/1999. With the deletion of section 23.1, section 23.2 would be amended as follows:

Delete: *"23.2 Regular full-time employees hired before 5/16/1999 shall earn vacation time at the following rate."*

Insert: *"23.1 Regular full-time employees shall earn vacation time at the following rate."*

The remaining language in section 23.2 would not be changed.

The current labor agreement provides for a two-tiered vacation benefit. Section 23.1 provides that employees hired after 5/16/1999 accrue vacation time at a lower rate than employees hired before 5/16/1999 (Section 23.2). This disparity in the vacation benefit needs to be corrected, as it creates conflict within the bargaining unit and is destructive to the cohesiveness of the Union.

The Union has also shown that the current vacation accrual rates for the Officers hired after 5/16/1999 are below the average rates, for four of six longevity steps, in similar departments within the 17 city comparison group.

During their presentation, the City speculated that the two-tier vacation accrual system was the result of collective bargaining. However, the City offered no

specific evidence or documentation showing that that LELS was a party to that change.

The Union's proposal will place all the Officers on the same, original vacation accrual schedule with an equal benefit to all members of the bargaining unit and will insure external equity. The proposal is reasonable and should be awarded.

Employer Position – The Union is proposing a change in the existing contract vacation schedule. The current schedule is a two-tier system based upon an Officer's date of hire. This system was adopted at the time of the first contract agreement between the City and LELS in 1999. The Union now argues that the current benefit levels cause conflict within the Patrol Officer group and that external comparables show that external comparables show higher benefits after ten (10) years of service.

The Union argues that the need for a change in the vacation accrual system is necessary because it is creating conflicts within the Patrol Officer group. However, no specific evidence of such conflicts or complaints was presented in support of that contention. Rather this is simply an effort, by the Union, to increase starting vacation benefits for the Patrol Officers, hired after 5/16/1999, to a level that is greater than what other City employees are currently entitled to. The Union's proposal would also give Patrol Officers a vacation accrual increase after 20 years of service that is greater than that for other City employees.

As shown in the hearing, the current vacation accrual schedule for Patrol Officers hired after 5/16/1999 is exactly the same as the current accrual schedule for both the City's non-union employees and the AFSCME-represented group.

The Union apparently believes that that the internal comparison situation can be overcome by the fact that the City's vacation benefit schedule lags behind the external comparison group in the category of "after 20+ years of service". This data, however, does not mean that the total hours provided by the City for the vacation benefit lags behind the comparison group, as the its schedule provides for vacation accrual at rates above the comparison averages during the first 10 years of service.

Additionally, an arbitration case cited by the Union, clearly states that the only time that an Interest arbitrator should deviate from an internal comparison is if the fringe benefit in question is lagging considerably behind the comparability group. As that is obviously not the case here, the internal comparison situation should be the guide for the arbitrator and the existing Vacation Accrual Schedule language should remain unchanged.

The City also believes that this Issue should be left to negotiation by the Parties, rather than determined by the arbitrator.

Analysis, Discussion and Conclusions – Given the facts and circumstances presented, involving Article 23, the Vacation provision of the contract; I find the City's statement that this provision was negotiated by the Parties back in 1999 to be credible. Since negotiating and creating the two-tier system for Vacation Accrual in their first contract, the Parties have subsequently reaffirmed that "creation" over the course of their later contracts.

Now, the Union appears to be disillusioned with what it helped create and is asking this arbitrator to step in and eliminate that "creation".

Consideration of the internal comparisons, as above, appear to mitigate against the Union's proposal and, instead, appears to support elimination of section 23.2 of Article 23, rather than 23.1. The external comparison evidence appears to be somewhat equivocal and does not strongly support the Union's position.

In view of the foregoing, I conclude that the evidence available is not sufficient to meet the Union's burden of proof that its proposed language change is either necessary or reasonable at this time. Finally, I find merit in the City's suggestion that this Issue would be best left to negotiation by the Parties. It is obvious to me that the Parties created this two-tiered "creature" back in 1999. Now the Union says it is unhappy with that creation and wants this arbitrator to eliminate it. I'm going to decline that opportunity. I believe the Parties, who jointly created it, are in the best position to jointly decide upon its future fate.

Award – Vacation – Level of Vacation for Employees Hired After 5/16/1999 (Article 23)

The City's position is awarded and the Union's proposed language change is denied.

ISSUE NOS. 7 AND 8 – INSURANCE 2006 AND 2007 – LEVEL OF EMPLOYEE CONTRIBUTION FOR 2006 AND 2007 (Article 25)

Because of the nature and relationship between Issues Nos. 7 and 8, I have decided to combine and deal with them together.

Employer Position – These two Issues concern the medical insurance premium rates to be paid for coverage for the Patrol Officer unit for both 2006 and 2007. The City has been continuing to pay the premiums for that coverage, since January 1, 2006, pursuant to the rates specified in the Parties' 2005 contract. The City is not seeking any refund of such premiums paid.

However, the City disputes the language in the 2005 contract as to how the amounts paid are to be calculated. The current contract language states that the City shall pay 100% of the single employee premium cost and 80% of the family or dependent coverage for the Patrol Officers.

It was the final bargaining position of the City on these Issues that it shall pay a specified dollar figure or amount towards the coverage premiums each year; rather than the set percentages required by the existing contract language. Under the percentage payment system, the City does not have any control of the dollar amounts of premiums paid each year. The Union's final position in negotiations was that the language in Article 25 should remain unchanged.

Minnesota Statute §471.6161, subd. 5 states that the aggregate value provided by a group insurance contract for employees covered by a collective bargaining agreement shall not be reduced, unless the public employer and the exclusive representative of the employees of an appropriate bargaining unit, certified under Minn. Stat. §179A.12, agree to a reduction in benefits. The City takes the position that a change in the language to a specific dollar amount from a specified percentage does not result in a change in the aggregate value of the insurance benefit provided to the employees under an agreement. Rather, it simply changes the method of determining the benefit so that there is a better and fairer mechanism for negotiating the benefit to be paid in the future. The City does not claim that it should not be required to pay 100% of the premiums for single coverage and 80% percent of the premiums for family coverage in the years 2006 and 2007. Instead, it believes a change in the payment mechanism language is necessary to control costs. The City is not asking for a change to a VEBA or Health Savings Account plan or for a loss of choice for treatment or care for the Patrol Officer group.

The meaning of the term "aggregate value", as used in Minn. Stat. §471.6161, subd. 5, has been defined by the Minnesota Court of Appeals in West St. Paul Federation of Teachers v. Independent School District No. 197, 713 N. W.2d 366, 181 LRRM 3331 (BNA). The Court stated that the plain and ordinary meaning of the phrase "aggregate value" is the whole and total amount of the good and services considered to be a fair and equivalent price of something else.

While it was the initial position of the City in negotiations that there should be a specific dollar figure in the 2006-2007 contract, it was stated by the City in the arbitration hearing and acknowledged by the Union that the City had paid a dollar figure equal to 100% for single coverage and 80% for dependent coverage for both 2006 and will continue doing so for 2007. Those actual dollar figures are as follows:

| | <u>2006</u> | <u>2007</u> |
|----------------------------|--------------|--------------|
| <u>Single Coverage:</u> | | |
| City pays (100%) - | \$557.00/mo. | \$587.00/mo. |
| <u>Dependent Coverage:</u> | | |
| City pays (80%) - | \$825.60/mo. | \$870.00/mo. |
| Employee pays (20%) - | \$206.40/mo. | \$217.50/mo. |

These figures were presented in the hearing. In essence, there is no change in the dollar figure paid. It truly is an apples-to-apples position and all the City is seeking is a change in the existing contract language to allow for discussion of insurance premium costs in negotiations for future contracts.

It is also interesting to note that the current Insurance contract language is the result of a determination via arbitration, not negotiation. The language, as adopted by the arbitrator, was the suggested language of the Union, but was not the juxt of its argument or position at that time. (See Opinion and Award of David S. Paull, City of Blue Earth and LELS, BMS Case No. 03-PN-863.) Rather, dollar figures were. In other words, the language in the current agreement is not the result of a negotiated settlement in any form. It is further interesting to note that Arbitrator Paull noted in his Award that the Union appeared to accept that the members of the bargaining unit must contribute in some meaningful way, to ameliorating the increasing cost of health care. He also indicates that his award for insurance was based primarily on market data and not internal evidence. This time, the Union presented internal comparisons as part of its evidence. That evidence shows that the City employees who are covered by the current AFSCME labor contract receive a specific dollar amount in payment of their insurance premiums, rather than a percentage of the premium amount. The same dollar amount system for payment of insurance premiums holds true for the City's non-union employees. The figures for those two groups for the Blue Cross-blue Shield VEBA Plan are as follows:

| | <u>2006</u> | <u>2007</u> |
|--|------------------------|------------------------|
| <u>Single Coverage:</u> | | |
| City pays - | \$420.83/mo. <u>1/</u> | \$442.83/mo. <u>1/</u> |
| Employee pays - | \$1.67/mo. | \$2.67/mo. |
| <u>Dependent Coverage:</u> | | |
| City pays - | \$266.67/mo. <u>2/</u> | \$288.67/mo. <u>2/</u> |
| Employee pays - | \$517.83/mo. | \$538.33/mo. |
| <u>1/</u> - City pays an additional \$154.17/mo. into VEBA Trust for the annual \$1850 deductible for single coverage. | | |
| <u>2/</u> - City pays an additional \$308.33/mo. into VEBA Trust for the annual \$3700 deductible for family coverage. | | |

The City further believes that the Opinion and Award of Arbitrator John J. Flagler in City of Austin and UAW, Local 867, BMS Case No. 05-PN-1205, is very similar to this matter and is the appropriate precedent to follow. That case was primarily about health care insurance premium increases. Arbitrator Flagler found that upon review of the published awards in Minnesota and elsewhere, that arbitrators rely primarily on internal comparisons with other bargaining units as well as non-union employees in the same employer organizations in resolving fringe benefit issues like health insurance coverage. He further stated in his award that well-recognized research into compensation systems reveals that people have stronger negative feelings about differences among internal employee groups on

matters like the number of paid holidays, amount of vacation time and health care packages than they do about wage differentials.

Accordingly, the City's proposed change on the Insurance provision of the contract is a reasonable one at this time and should be awarded.

Union Position – With regard to Issues Nos. 8 and 9, the City proposes to change the current method and the amount that it contributes to single and dependent insurance coverage for the Patrol Officers. The current contract language requires the City to pay 100% of the premium for Single coverage and 80% of the premium for Dependent coverage, with the employee paying the remaining 20%.

The City proposes to eliminate fully paid Single coverage and replace it with a flat dollar amount of \$557.00/mo. Its proposal would eliminate the current cost-sharing language on Dependent coverage and replace it with a flat dollar amount of \$825.60/mo. Since that City is proposing a change in the benefit amount, it bears the burden of proof establishing the need for the proposed change.

The current contract language, providing for fully paid Single coverage and 80/20 cost sharing ratio for Dependent coverage have been in effect since 2003 and is the result of an arbitration award, by Arbitrator David Paull. His Opinion and Award are cited by the City. The City asserts that Arbitrator Paull, in that decision, awarded language that was not requested or proposed by the Union. That assertion is not correct. In his award, Arbitrator Paull quoted the Union position when he wrote, "The Union proposes that the city contribute an amount equal to 100% of the single coverage premium and 80% of the dependent coverage premiums in each year."

The City's proposal on the insurance contribution by the Employer is to simply eliminate the language resulting from the 2003 arbitration. The City wants to take away both the cost sharing language for dependent coverage and the fully paid single coverage. The City's proposed insurance benefit reduction is coupled with their proposed wage freezes for 2006 and 2007 for the Patrol Officers. The City offers no *quid pro quo* for this significant reduction in the insurance benefit.

In the negotiations for this contract, the City suggested that changing to dollar amounts for the Employer's contributions toward Insurance would contribute to successful contract negotiations, yet throughout those negotiations the City maintained its wage freeze proposals for 2006 and 2007. This is clearly a self-serving argument. It is evident that the City is unable to offer any sound rationale, or a compelling reason for this outrageous change to a benefit that was awarded in the 2003 arbitration. The City has failed to offer any facts to support an inability to continue fully paid Single coverage or the current cost sharing for Dependent coverage.

The Union does not disagree that current health insurance costs are a significant issue and efforts must be made to minimize the financial impact of those costs on both the employees and the City. However, these efforts must be the result of a collective solution in the context of collective bargaining, not the result of unilateral changes by the City trying to take advantage of the arbitration process. The City should not be allowed to obtain through arbitration what they were unable to obtain at the bargaining table, primarily because they were unwilling to engage in meaningful bargaining and refused to offer any *quid pro quo* for a change in the current cost sharing language. The current language does provide a specific mechanism for sharing increasing insurance costs. In addition, the current language provides a similar cost sharing mechanism to that found in the 17 city comparison group.

Numerous arbitrators have addressed and articulated the commonly accepted axiom in Interest arbitration that the party proposing a change in an existing provision or language of their contract bears the burden of proving through clear and convincing evidence, first, the need for such change and then the reasonableness of the proposal.

The Union believes that it has shown that the City has failed to meet their burden of providing both a sound rationale and compelling reasons in support of their proposed insurance change. They have also failed to provide a significant *quid pro quo* for these proposed significant changes and reductions in the insurance benefit. For these reasons, the City's proposed change should be denied and the Union's position awarded.

Analysis, Discussion and Conclusions - The City is proposing a change in the current contract language in Article 25, Insurance, that would replace the existing percentage premium contribution schedule with a specific dollar amount contribution. According to the record evidence, the contracts prior to 2002 contained contribution rates expressed in dollars. In 2003, the Parties went to impasse over the issue of dollar contribution rates and the issue ended up in arbitration. In that arbitration, Arbitrator David S. Paull resolved the issue by awarding the Union's position that required the City's contribution rates be expressed in percentages, rather than dollars. Concurrently, he denied the City's position which proposed a continuation of using specific dollar amounts for the insurance premium contribution rates. As a result of Paull's award, the insurance contribution rates have been by percentage, not dollar amounts, in the Parties' 2002-2004 and 2005 contracts. I also note that the Parties did not arbitrate an Insurance issue for the 2005 contract, and apparently agreed to continue the language resulting from Paull's 2003 award.

The City acknowledges that since the expiration of the 2005 contract, it has continued to pay the health insurance premiums for 2006 and 2007 according to the percentages specified in the 2005 contract. The City says it is not seeking to change the insurance contribution amounts that it has paid, that it will continue to

pay for the remainder of 2007 and it is not seeking any refunds. Instead, it is proposing that the language of Article 25 – Insurance revert back to quoting the contribution rates in dollars, rather than percentages, so that it will be in a better position in the next contract negotiations to control health insurance contribution costs and cost sharing.

In view of the foregoing, I conclude that the City's position and proposal is designed to reverse or overturn Arbitrator Paull's 2003 award through this current arbitration process. I also conclude that the City, while it has been and is paying the specified percentage contributions, now wants this arbitrator to convert those current contribution rates from percentages to dollars in the 2006-2007 contract so that its bargaining position will be enhanced or strengthened in the coming negotiations for the next contract in 2008. To adopt the City's proposal would obviously have no impact or effect on the insurance contribution situation for this contract. It would only serve to enhance the City's bargaining position for the next contract.

The Parties were in arbitration in 2003 on this insurance contribution issue because they couldn't reach agreement over the dollar contribution amounts. Arbitrator Paull's solution was to put the issue on a percentage basis, rather than dollars. That solution has effectively been in place for the last two contracts. Based upon the foregoing, I conclude that the City has failed to establish by a preponderance of evidence that its position is relevant, reasonable or necessary at this time. If the Parties wish to change or modify Arbitrator Paull's percentage decision with respect to their next contract, they need to mutually do so in the context of their upcoming negotiations for a new 2008 agreement.

Award – Issue Nos. 7 and 8 - Insurance 2006and 2007 – Level of Employee Contribution for 2006 and 2007 (Article 25)

The Union's position is awarded and the City's position is denied.

Dated at Minneapolis, Minnesota this 3rd day of August, 2007.

/s/ Frank E. Kapsch, Jr.
Frank E. Kapsch, Jr., Arbitrator

Note: I shall retain jurisdiction in this matter for a period of 30 calendar days from the date of this Decision and Award to deal with any related questions or problems.